

**U.S. District Court
Southern District of Florida (West Palm Beach)
CIVIL DOCKET FOR CASE #: 9:19-cv-80626-DMM**

Fitzhenry v. ADT LLC et al
Assigned to: Judge Donald M. Middlebrooks
Referred to: Magistrate Judge Dave Lee Brannon
Cause: 28:1331 Federal Question

Date Filed: 05/10/2019
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Mark Fitzhenry
*individually and on behalf of all others similarly
situated*

represented by **Rachel E Kaufman**
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V.

Defendant

ADT LLC
a Delaware company
TERMINATED: 08/07/2019

represented by **Charles Sanders McNew**
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Defendant

Safe Streets USA LLC
a Delaware company

represented by **David M. Hawthorne**
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Jeffrey Aaron Backman
(See above for address)
TERMINATED: 08/12/2019
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Gregg Ian Strock
(See above for address)
TERMINATED: 08/12/2019
ATTORNEY TO BE NOTICED

Defendant

Tektiks Innovative Network USA, Inc.
a New York company

Date Filed	#	Docket Text
05/10/2019	<u>1</u>	COMPLAINT against ADT LLC, Safe Streets USA LLC. Filing fees \$ 400.00 receipt number 113C-11632662, filed by Mark Fitzhenry. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Summon(s), # <u>3</u> Summon(s))(Kaufman, Avi) (Entered: 05/10/2019)
05/10/2019	<u>2</u>	<p>Clerks Notice of Judge Assignment to Judge Donald M. Middlebrooks and Magistrate Judge Dave Lee Brannon.</p> <p>Pursuant to 28 USC 636(c), the parties are hereby notified that the U.S. Magistrate Judge Dave Lee Brannon is available to handle any or all proceedings in this case. If agreed, parties should complete and file the Consent form found on our website. It is not necessary to file a document indicating lack of consent.</p> <p>Pro se (NON-PRISONER) litigants may receive Notices of Electronic Filings (NEFS) via email after</p>

		filing a Consent by Pro Se Litigant (NON-PRISONER) to Receive Notices of Electronic Filing. The consent form is available under the forms section of our website. (pcs) (Entered: 05/10/2019)
05/10/2019	<u>3</u>	Summons Issued as to ADT LLC, Safe Streets USA LLC. (pcs) (Entered: 05/10/2019)
05/14/2019	<u>4</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline pursuant to Fed. R. Civ. P. 12 by Mark Fitzhenry. ADT LLC served on 5/13/2019, answer due 6/3/2019. (Kaufman, Avi) (Entered: 05/14/2019)
05/14/2019	<u>5</u>	SUMMONS (Affidavit) Returned Executed on <u>1</u> Complaint with a 21 day response/answer filing deadline pursuant to Fed. R. Civ. P. 12 by Mark Fitzhenry. Safe Streets USA LLC served on 5/13/2019, answer due 6/3/2019. (Kaufman, Avi) (Entered: 05/14/2019)
05/31/2019	<u>6</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer as to <u>1</u> Complaint by Safe Streets USA LLC. Attorney Jeffrey Aaron Backman added to party Safe Streets USA LLC(pty:dft). (Attachments: # <u>1</u> Text of Proposed Order)(Backman, Jeffrey) (Entered: 05/31/2019)
06/03/2019	<u>7</u>	ORDER REFERRING CASE AND SETTING TRIAL DATE: (Jury Trial set for 3/2/2020 09:00 AM in West Palm Beach Division before Judge Donald M. Middlebrooks., Calendar Call set for 2/26/2020 01:15 PM before Judge Donald M. Middlebrooks.), ORDER REFERRING CASE to Magistrate Judge Dave Lee Brannon to enter a Scheduling Order. Signed by Judge Donald M. Middlebrooks on 6/3/2019. <i>See attached document for full details.</i> (pcs) <u>Pattern Jury Instruction Builder</u> – To access the latest, up to date changes to the 11th Circuit Pattern Jury Instructions go to https://pji.ca11.uscourts.gov or click here . (Entered: 06/03/2019)
06/03/2019	<u>8</u>	PAPERLESS ORDER granting <u>6</u> Unopposed Motion for Extension of Time. The deadline for Defendant Safe Streets USA LLC to respond to Plaintiff's Complaint (DE <u>1</u>) is extended to June 17, 2019. No other deadlines are modified or extended as a result of this Order. Signed by Judge Donald M. Middlebrooks on 6/3/2019. (mbt) (Entered: 06/03/2019)
06/03/2019	<u>9</u>	Unopposed MOTION for Extension of Time to File Response/Reply/Answer as to <u>1</u> Complaint by ADT LLC. Attorney Jeffrey Aaron Backman added to party ADT LLC(pty:dft). (Attachments: # <u>1</u> Text of Proposed Order on ADT_s Unopposed Motion for Extension of Time to Respon.)(Backman, Jeffrey) (Entered: 06/03/2019)
06/04/2019	<u>10</u>	PRETRIAL SCHEDULING ORDER AND ORDER REFERRING CASE TO MEDIATION: (Amended Pleadings due by 8/6/2019., Discovery due by 12/9/2019., Joinder of Parties due by 8/6/2019., In Limine Motions due by 12/30/2019., Dispositive Motions due by 12/30/2019., Motions due by 12/30/2019., Pretrial Stipulation due by 2/3/2020.) Signed by Magistrate Judge Dave Lee Brannon on 6/4/2019. <i>See attached document for full details.</i> (pcs) (Entered: 06/05/2019)
06/06/2019	<u>11</u>	PAPERLESS ORDER granting <u>9</u> Unopposed Motion for Extension of Time. The deadline for Defendant ADT LLC to respond to Plaintiff's Complaint (DE <u>1</u>) is extended to June 17, 2019. No other deadlines are modified or extended as a result of this Order. Signed by Judge Donald M. Middlebrooks on 6/6/2019. (mbt) (Entered: 06/06/2019)
06/07/2019	<u>12</u>	NOTICE of Attorney Appearance by Charles Sanders McNew on behalf of ADT LLC. Attorney Charles Sanders McNew added to party ADT LLC(pty:dft). (McNew, Charles) (Entered: 06/07/2019)
06/10/2019	<u>13</u>	NOTICE of Attorney Appearance by Gregg Ian Strock on behalf of ADT LLC, Safe Streets USA LLC. Attorney Gregg Ian Strock added to party ADT LLC(pty:dft), Attorney Gregg Ian Strock added to party Safe Streets USA LLC(pty:dft). (Strock, Gregg) (Entered: 06/10/2019)
06/17/2019	<u>14</u>	ANSWER and Affirmative Defenses to Complaint by ADT LLC, Safe Streets USA LLC. (Strock, Gregg) (Entered: 06/17/2019)

06/19/2019	<u>15</u>	NOTICE of Mediator Selection. Added Mark Fitzhenry, Jeffrey Grubman. (Kaufman, Avi) (Entered: 06/19/2019)
06/26/2019	<u>16</u>	Joint SCHEDULING REPORT – Rule 26(f) by Mark Fitzhenry (Kaufman, Avi) (Entered: 06/26/2019)
06/26/2019	<u>17</u>	Joint SCHEDULING REPORT – Rule 26(f) by ADT LLC, Safe Streets USA LLC (Strock, Gregg) (Entered: 06/26/2019)
08/06/2019	<u>18</u>	MOTION for Leave to File <i>Amended Complaint</i> by Mark Fitzhenry. (Attachments: # <u>1</u> Exhibit 1 – Proposed amended complaint)(Kaufman, Avi) (Entered: 08/06/2019)
08/07/2019	<u>19</u>	PAPERLESS ORDER granting <u>18</u> Motion for Leave to Amend the Complaint. Federal Rule of Civil Procedure 20 permits joinder of defendants if "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(2)(B). That standard appears to be met here, as Plaintiff is seeking to join the contracted telemarketer alleged to have made the complained-of calls on behalf of Defendant Safe Streets USA LLC. I also note that the deadline to amend pleadings and/or join parties had not expired by the time Plaintiff sought leave to amend. Even if the deadline had expired, however, Rule 15(a) provides that leave to amend a pleading should be freely granted "when justice so requires." Based on the foregoing, the motion is GRANTED. Plaintiff is advised that pursuant to Local Rule 15.1, the amended pleading must be separately filed. The deadline for Plaintiff to file the amended complaint is August 9, 2019. Signed by Judge Donald M. Middlebrooks on 8/7/2019. (mbt) (Entered: 08/07/2019)
08/07/2019	<u>20</u>	AMENDED COMPLAINT against Safe Streets USA LLC, Tektiks Innovative Network USA, Inc. filed in response to Order Granting Motion for Leave, filed by Mark Fitzhenry. (Attachments: # <u>1</u> Summon(s))(Kaufman, Avi) (Entered: 08/07/2019)
08/07/2019	<u>21</u>	Summons Issued as to Tektiks Innovative Network USA, Inc. (mc) (Entered: 08/07/2019)
08/07/2019	<u>22</u>	Joint STIPULATED MOTION for Substitution of Counsel. Substituting David M. Hawthorne for Gregg I. Strock and Jeffery Backman by Safe Streets USA LLC. Attorney David M. Hawthorne added to party Safe Streets USA LLC(pty:dft). Responses due by 8/21/2019 (Attachments: # <u>1</u> Exhibit Proposed Order)(Hawthorne, David) (Entered: 08/07/2019)
08/08/2019	<u>23</u>	Reset Deadlines Per DE#19. Amended Complaint due by 8/9/2019. (cqs) (Entered: 08/08/2019)
08/12/2019	<u>24</u>	ORDER APPROVING DEFENDANTS STIPULATION FOR SUBSTITUTION OF COUNSEL, granting <u>22</u> Motion for Substitution of Counsel. Attorney David M. Hawthorne added. Attorney Jeffrey Aaron Backman and Gregg Ian Strock terminated. Signed by Judge Donald M. Middlebrooks on 8/12/2019. <i>See attached document for full details.</i> (pcs) (Entered: 08/13/2019)
08/16/2019	<u>25</u>	Joint Stipulation regarding Transfer of Venue and Motion to Approve Stipulation by Mark Fitzhenry (Kaufman, Avi) Modified to convert document to a motion on 8/19/2019 (ls). (Entered: 08/16/2019)
08/19/2019	<u>26</u>	Clerks Notice to Filer re <u>24</u> Stipulation. Wrong Event Selected – Document is a Motion; ERROR – The Filer selected the wrong event. A motion event must always be selected when filing a motion. The correction was made by the Clerk. It is not necessary to refile this document. (ls) (Entered: 08/19/2019)
08/21/2019	<u>27</u>	ANSWER and Affirmative Defenses to Amended Complaint by Safe Streets USA LLC. (Hawthorne, David) (Entered: 08/21/2019)
08/29/2019	<u>28</u>	PAPERLESS ORDER. Plaintiff Mark Fitzhenry and Defendant Safe Streets USA LLC ("Safe Streets") have filed a Joint Stipulation Regarding Transfer of Venue and Motion to Approve Stipulation. (DE <u>24</u>). In the motion, those parties request for this Court to transfer the lawsuit to the Western Division of the Eastern District of North Carolina because Safe Streets is headquartered

within that district. "For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought or to any district or division to which all parties have consented." 28 U.S.C.A. § 1404. While Plaintiff and Defendant Safe Streets have consented to this transfer, the position of Defendant Tektiks Innovative Network USA, Inc. ("Tektiks") is not yet known. The record reflects that a summons was issued to Tektiks on August 7, 2019 (DE 21), however no executed return of service has been filed in the court record, and no attorney has yet appeared on Tektiks' behalf. Accordingly, the Parties are DIRECTED to file a Notice with the Court, on or before September 11, 2019, apprising the Court of Defendant Tektiks' position regarding transferring this action to the Western Division of the Eastern District of North Carolina. Signed by Judge Donald M. Middlebrooks on 8/29/2019. (kal) (Entered: 08/29/2019)

09/04/2019	<u>28</u>	WAIVER OF SERVICE Returned Executed by Mark Fitzhenry. Tektiks Innovative Network USA, Inc. waiver sent on 8/30/2019, answer due 10/29/2019. (Kaufman, Avi) (Entered: 09/04/2019)
09/04/2019	<u>29</u>	NOTICE by Mark Fitzhenry re 27 Order,,,,, Set/Reset Deadlines,,,,, <i>regarding Service of Process and Regarding Newly Served Defendant's Consent to Transfer of this Action</i> (Kaufman, Avi) Modified Text on 9/5/2019 (ls). (Entered: 09/04/2019)
09/06/2019	<u>30</u>	ORDER GRANTING THE PARTIES' MOTION TO TRANSFER granting <u>24</u> Motion to Reassign Case. Signed by Judge Donald M. Middlebrooks on 9/6/2019. <i>See attached document for full details.</i> (pcs) (Entered: 09/06/2019)